

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No.: 18-cv-1303(JS)(JMW)

**JOINT PRETRIAL
ORDER**

-----X
STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 VACATION FUND; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 WELFARE FUND; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 PENSION FUND; STEPHEN FLANAGAN, as Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 ANNUITY FUND; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 LABORERS' EMPLOYER COOPERATIVE AND EDUCATIONAL TRUST FUND; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 GREATER NY LABORERS' EMPLOYER COOPERATIVE AND EDUCATIONAL TRUST FUND; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 TRAINING PROGRAM; STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 NEW YORK STATE HEALTH AND SAFETY FUND; STEPHEN FLANAGAN, as Business Manager of GENERAL BUILDING LABORERS' LOCAL UNION NO. 66 of the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

Plaintiffs,

-against-

WILLIAM G. PROPHY LLC dba WGP CONTRACTING INC. and WILLIAM G. PROEFRIEDT,

Defendants.

-----X
The parties have conferred among themselves and with the court pursuant to Federal Rule of Civil Procedure 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.

Trial Counsel for Plaintiffs:

- William T. LaVelle, Esq.
LaVelle Law & Associates, P.C.
57 E. Main Street
Patchogue, NY 11772

(phone) 631-475-0001
(fax) 631-447-7150
(e-mail) wtlpc@aol.com

Trial Counsel for Defendants:

- Shaun Hogan, Esq.
Hogan & Cassell, LLP
500 North Broadway, Suite 153
Jericho, NY 11753
(phone): 516-942-4704
(fax): 516-942-4705
(e-mail): skhogan@hogancassell.com

Jurisdiction:

The action involves a federal question, pursuant to 29 U.S. § 1132(g).

Claims and Defenses to be Tried:

Defendants are alleged to have failed to pay the proper amount of monies of fringe benefit contributions or into the Local 66 annuity, welfare, training and pensions funds for their employees who engaged in jurisdictional work, pursuant to the "Collective Bargaining Agreement." It is also alleged that the defendants also failed to pay the Union dues as was required pursuant to the "Collective Bargaining Agreement."

It is Defendants' position that the work at issue was not work that falls within the scope of the "Collective Bargaining Agreement." In addition, even if some of the work performed by the employees of WGP Contracting was within the scope of the "Collective Bargaining Agreement", the numbers calculated by Plaintiffs are alleged to be excessive since they are alleged to be based upon unsupported assumptions. Finally, the workers at issue were already paid the monies allegedly owed via the resolution with the Department of Labor.

The case is to be tried without a jury and it is anticipated that the actual trial will take five (5) to seven (7) days.

Trial Before Magistrate Judge:

All parties have consented to Magistrate Judge James M. Wicks presiding over the trial.

Stipulations:

The parties have entered into the following stipulations and/or agreements of fact or law: The parties stipulate to the genuineness and authenticity of Plaintiffs' exhibits five (5) to twenty-two (22).

Plaintiffs' Witnesses:

Plaintiffs' Witnesses Names and brief summary of their intended testimony	Defendants' Objection	Defendants' Basis for Objection
<p><u>Stephen Flanagan:</u> Mr. Flanagan is the Business Manager and Trustee for every "Local 66" fringe benefit fund named in the caption. Mr. Flanagan will testify as to verbal conversations that he had with the principal of William G. Prophy, LLC d/b/a WGP Contracting, Inc., --- that being defendant, William G. Proefriedt regarding the provisions contained within the "Collective Bargaining Agreement" which was executed by and between "Local 66" and the corporate defendant and William G. Proefriedt.</p>	No objection	Not applicable
<p>Mr. Flanagan will also testify as to the jurisdictional work definitions as set forth in said "Collective Bargaining Agreement."</p>	No objection	Not applicable
<p>Mr. Flanagan will testify that the defendants failed to notify the plaintiffs that they had won the bids for the job sites that are the subject of the instant action, as was required under the "Collective Bargaining Agreement."</p>	Defendants object	Hearsay
<p>Mr. Flanagan will also testify that the defendants also failed to request that the Union assign laborers and apprentices to the job sites that are the subject of the instant action, as was required under the "Collective Bargaining Agreement."</p>	Defendants object	Hearsay
<p>Mr. Flanagan also will testify that after the "Collective Bargaining Agreement" was executed that the defendants failed to notify "Local 66" that they had won several bids on "jobs" unrelated to the instant action. Lastly, Mr. Flanagan will also testify</p>	Defendants object	Hearsay. Defendants also object to the testimony as cumulative.

that the defendants failed to “sign up” Union members within seven (7) calendar days from the start of the work and failed to remit any fringe benefit contributions or pay the Union dues thereof		
<p>Anthony Senia: Mr. Senia is the dispatcher at the “Local 66” hiring hall and assigns laborers and apprentices to the various construction projects.</p> <p>Mr. Senia will testify as to Local 66’s practices regarding the assignment of laborers and apprentices to the construction sites, as required pursuant to the “Collective Bargaining Agreement” executed by and between “Local 66” and the corporate defendant.</p> <p>Mr. Senia will testify that the defendants failed to notify the plaintiffs that they had won the bids for the job sites that are the subject of the instant action.</p> <p>Mr. Senia will also testify that the defendants also failed to request that the Union assign laborers and apprentices to the job sites that are the subject of the instant action, as was required under the “Collective Bargaining Agreement.”</p> <p>Mr. Senia also will testify that after the “Collective Bargaining Agreement” was executed, the defendants failed to notify “Local 66” that they had won several bids on “job sites” unrelated to the instant action.</p>	<p>No objection</p> <p>No objection</p> <p>Defendants object</p> <p>Defendants object</p> <p>Defendants object</p>	<p>Not applicable</p> <p>Not applicable</p> <p>Hearsay</p> <p>Hearsay</p> <p>Hearsay</p>

<p>Lastly, Mr. Senia will also testify that the defendants failed to "sign up" Union members within seven (7) calendar days from the start of the work and failed to remit any fringe benefit contributions or "dues check off" monies thereof.</p> <p>Lastly, Mr. Senia" will testify to receiving and sending various e-mails to/from Mr. Proefriedt.</p>	<p>Defendants object</p> <p>No objection</p>	<p>Hearsay. Defendants also object to the testimony as cumulative</p> <p>Not applicable</p>
<p>Nellie Sanchez: Ms. Sanchez is the "Local 66" hiring hall coordinator responsible for the hiring of laborers and apprentices to various construction projects. Ms. Sanchez will testify to the hiring of laborers and apprentices to the subject construction job, pursuant to the "Collective Bargaining Agreement" executed by and between "Local 66" and the corporate defendant and defendant, William G. Proefriedt.</p> <p>Ms. Sanchez will testify that the defendants failed to notify the plaintiffs that they had won the bids for the job sites that are the subject of the instant action.</p> <p>Ms. Sanchez will also testify that the defendants also failed to request that the Union assign laborers and apprentices to the job sites that are the subject of the instant action, as was required under the "Collective Bargaining Agreement."</p> <p>Ms. Sanchez also will testify that after the "Collective Bargaining Agreement" was executed, the</p>	<p>No objection</p> <p>Defendants object</p> <p>Defendants object</p> <p>Defendants object</p>	<p>Not applicable</p> <p>Hearsay</p> <p>Hearsay</p> <p>Hearsay. Defendants also object to the testimony as cumulative</p>

<p>defendants failed to notify "Local 66" that they had won several bids on "job sites" unrelated to the instant action.</p> <p>Lastly, Ms. Sanchez will also testify that the defendants failed to "sign up" Union members within seven (7) calendar days from the start of the work and failed to remit any fringe benefit contributions or Union dues thereof.</p>	Defendants object	Hearsay. Defendants also object to the testimony as cumulative
<p><u>Lorraine Leonard:</u> Ms. Leonard is an administrative assistant for "Local 66" who "processes" the "Collective Bargaining Agreement" after its execution. Ms. Leonard will testify about her "processing" of the "Collective Bargaining Agreement" executed by and between "Local 66" and the corporate defendant.</p> <p>Ms. Leonard will also testify about speaking to Mr. Proefriedt about the "processing" of the "Collective Bargaining Agreement."</p> <p>Ms. Leonard will also testify that the defendants never remitted the union dues that were owed to the plaintiffs, pursuant to and required by the "Collective Bargaining Agreement"</p>	<p>No objection</p> <p>Defendants object</p> <p>Defendants object</p>	<p>Not applicable</p> <p>Hearsay</p> <p>Hearsay. Defendants also object to the testimony as cumulative</p>

<p><u>Joseph Montabano:</u> Mr. Montabano is a business delegate and investigator for "Local 66." Mr. Montabano will testify about conversations that he had with Mr. Proefriedt on issues relevant to this action.</p> <p>Mr. Montabano will also testify as to the genuineness of certain documents and photographs, which he had taken at the job sites which are the subject of the instant action, relative to the amount of jurisdictional work that the defendants conducted at said job sites.</p>	<p>No objection</p> <p>Defendants object</p>	<p>Not applicable</p> <p>Hearsay. Defendants also object to any testimony based upon photographs, since they were produced belatedly.</p>
<p><u>Allen Marmor:</u> Mr. Marmor is the "Local 66" Funds Administrator. Mr. Marmor will testify to the as to the required amounts of fringe benefit contributions and increases thereof that occurred during the time that the "Collective Bargaining Agreement."</p> <p>Mr. Marmor will also testify as to the existence and genuineness of the Reaffirmation & Restatement of the General Building Laborers' Local 66 annuity fund, welfare fund, training fund and the pension fund.</p>	<p>Defendants object</p> <p>No objection</p>	<p>Hearsay. Defendants also object to the testimony as cumulative.</p> <p>Not applicable</p>
<p><u>Tom Sfera:</u> Mr. Sfera is an auditor at the accounting/consulting firm, Schultheis & Panettieri, LLP. Mr. Sfera conducted the audit and produced an audit report and he will testify to his findings thereof.</p> <p>Mr. Sfera will also testify as to the costs associated with conducting the audit.</p>	<p>No objection</p> <p>No objection</p>	<p>Not applicable</p> <p>Not applicable</p>
<p><u>Angelos Poulos:</u> Mr. Poulos is a supervising auditor at the accounting/consulting firm, Schultheis & Panettieri, LLP. Mr. Poulos reviewed and "signed off" on the audit report produced by auditor, Tom Sfera.</p>	<p>No objection</p>	<p>Not applicable</p>

Mr. Sfera will also testify as to the costs associated with conducting the audit.	No objection	Not applicable
---	--------------	----------------

Defendants' Witnesses:

Defendants' Witnesses Names and a brief summary of their intended testimony	Plaintiffs' Objection	Plaintiffs' Basis for the Objection
William Proefriedt. He will testify as to his dealings with Local Union 66 ("Union 66"), why the work at issue is not covered under the Collective Bargaining Agreement (the "CBA") and why the workers at issue were already paid the monies allegedly owed via the resolution with the Department of Labor.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Matthew Proefriedt. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Patrick Proefriedt. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first-hand knowledge.
Robert Proefriedt. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.

Timothy Salvadori. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Thomas Domdrowski. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Christopher Gatton. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Matthew Young. He will testify as to why the work at issue is not covered under the CBA.	Plaintiffs object	The objection is based on the fact that what is considered to be 'jurisdictional' work is a question of law. Plaintiffs do not object to the witness testifying as to what work was actually done based on his first- hand knowledge.
Raymond Perini, Esq. He will testify as to dealings with the Department of Labor.	Plaintiffs object	Hearsay
Matthew Myers. He will testify regarding dealings between WGP Contracting and the Department of Labor.	Plaintiffs object	Hearsay
Brian Lamb. He will testify regarding dealings between WGP Contracting and the Department of Labor.	Plaintiffs object	Hearsay
Eric Lucas. He will testify regarding dealings between WGP Contracting and the State Parks Department and that the work at issue is not Local	Plaintiffs object	Hearsay

Union 66 work.		
Matt Barbra. He will testify regarding dealings between WGP Contracting and the State Parks Department and that the work at issue is not Local Union 66 work.	Plaintiffs object	Hearsay

Deposition Transcripts:

Portion of Deposition transcripts intended to be introduced at trial	Party intending to introduce such deposition testimony	Basis for a Party's objection
Plaintiff does not intend to introduce portions of the deposition transcripts at trial. Plaintiffs reserve the right to use portions of deposition transcripts for cross-examination purposes	Not applicable	Not applicable
Defendants do not intend to introduce portions of deposition transcripts for their case-in-chief. Defendants reserve the right to use portions of deposition transcripts for cross-examination purposes.	Not applicable	Not applicable

Plaintiffs' Exhibits:

Plaintiffs' Exhibits	Defendants' Objection	Defendants' Basis for the Objection
1. Reaffirmation & Restatement of the General Building Laborers' Local 66 Annuity Fund	Defendants object	Authenticity, foundation
2. Reaffirmation & Restatement General Building Laborers' Local 66 Pension Fund	Defendants object	Authenticity, foundation
3. Reaffirmation and Restatement General Building Laborers' Local 66 Training Fund	Defendants object	Authenticity, foundation
4. Reaffirmation & Restatement of the General Building Laborers' Local 66 Welfare Fund	Defendants object	Authenticity, foundation

5. the "Collective Bargaining Agreement" between plaintiffs and defendants (a/k/a) "Trade Agreement")	No objection as to the genuineness or authenticity (NTA)	Not applicable
6. a letter written by the Town of North Hempstead Office of the Town Attorney, dated August 24, 2016, which was addressed to defendant, William G. Prophy, LLC d/b/a WGP Contracting, Inc.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
7. an e-mail, dated September 13, 2016, sent by William G. Proefriedt to "Local 66" training hall coordinator, Karen Pacella	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
8. an e-mail chain which contains the following four (4) e-mails: (1) an e-mail sent by William Proefriedt to the "Local 66" training hall coordinator, Karen Pacella, dated October 4, 2016; (2) an e-mail sent by Ms. Pacella to Mr. Proefriedt, dated October 5, 2016; (3) an e-mail sent by Mr. Proefriedt to Ms. Pacella, dated October 6, 2016; and (4) an e-mail sent by Ms. Pacella to Mr. Proefriedt, dated October 5, 2016	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
9. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle dated December 16, 2017	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
10. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated February 22, 2018.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
11. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated February 23, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
12. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated March 18, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable

13. an e-mail sent by plaintiffs' attorney William LaVelle to William Proefriedt, dated March 23, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
14. an e-mail from Mark Reinharz to plaintiffs' attorney, William LaVelle, dated March 26, 2018, which also contains an e-mail sent by William Proefriedt to Mark Reinharz with a "cc" to William LaVelle, dated March 31, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
15. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated April 3, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
16. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated April 10, 2018	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
17. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated May 10, 2018 at 9:39 p.m.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
18. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated May 10, 2018 at 9:46 p.m.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
19. an e-mail sent by William Proefriedt to plaintiffs' attorney, William LaVelle, dated May 12, 2018 at 8:20 a.m.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
20. an e-mail sent by William Proefriedt to plaintiffs' attorney William LaVelle, dated May 12, 2018 at 1:15 p.m.	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
21. a letter sent by William Proefriedt to Justice Joanna Seybert, dated February 9, 2019	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable
22. a letter sent by William Proefriedt to plaintiffs' attorney William LaVelle, dated December 18, 2019	No objection as to the genuineness or authenticity of this document (NTA)	Not applicable

23. Documents relative to work performed at the job site and photographs taken by "Local 66" business delegate and investigator, Joseph Montabano all of which show, amongst other things, that the defendants conducted significant jurisdictional work at the job site	Defendants object	Authenticity, foundation
24. Preliminary audit report conducted by plaintiffs' accounting/consulting firm, Schultheis & Panettieri, LLP, dated November 21, 2018	Defendants object	Hearsay, document produced for litigation, and thus, not a business record. Findings are speculative
25. Final audit reported conducted by plaintiffs' accounting/consulting firm, Schultheis & Panettieri, LLP, dated January 15, 2019.	Defendants object	Hearsay, document produced for litigation, and thus, not a business record. Findings are speculative
26. Three wage increase letters covering 7/1/16 to 6/30/17	Defendants object	Authenticity, foundation
27. WSP Contracting Telephone log covering the dates 12/11/17 to 5/18/18	Defendants object	Authenticity, foundation
28. 2017 DOL reports	No objection	Not applicable
29. 2018 DOL reports	No objection	Not applicable

Defendants' Exhibits:

Defendants' Exhibits	Plaintiffs' Objection	Plaintiffs' Basis for the Objection
A. Department of Labor Stipulation and Order and Determination.	Plaintiff objects to the introduction of this exhibit at trial.	The stipulation itself speaks about an exhibit which is included as part of the stipulation itself, therefore the exhibit must be attached to the stipulation.
B. 2017 DOL reports.	No objection	Not applicable

C. 2018 DOL reports.	No objection	Not applicable
----------------------	--------------	----------------

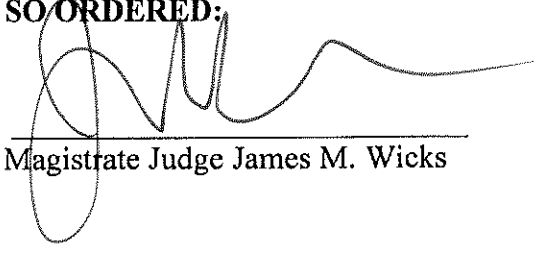
Relief Sought:

Plaintiffs seek a verdict in favor of the plaintiffs holding that the defendants have failed to comply with the provisions of the "Collective Bargaining Agreement" by conducting extensive jurisdictional work at the subject job site to which they failed to pay the proper amount of monies into the plaintiffs' annuity, welfare, training and pension funds, while also failing to pay the applicable Union dues. Plaintiff also seek the imposition of attorney fees, case expenses, applicable interest and audit expenses.

Dated: Central Islip, New York
September 22, 2021

SO ORDERED:

9/29/2021


Magistrate Judge James M. Wicks